

REMARKS/ARGUMENTS

Reconsideration and withdrawal of the outstanding grounds of rejection are respectfully requested in light of the above amendments and the remarks which follow.

At the outset, applicant requests that the finality of the Office Action of June 18, 2003 be withdrawn. The Examiner contends that all claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office Action if they had been entered in the application prior to entry under 37 CFR 1.114.

However, as expressly stated in Section 706.07(b) of the MPEP:

However, it would not be proper to make final a first office action in a continuing or substitute application where that application contains material which was presented in the earlier application after final rejection or closing of prosecution but was denied entry because (A) new issues were raised that required further consideration and/or search, or (B) the issue of new matter was raised.

The Examiner will recall that in the Advisory Action of May 29, 2003, applicant's proposed amendment of May 15, 2003 was denied entry at least on the ground that it raised the issue of new matter. Accordingly, the finality of the Office Action of June 18, 2003 is premature and withdrawal is requested.

The Examiner has rejected claims 17-20 and 22 under 35 U.S.C. 112, first paragraph as failing to comply with the written description requirement, the Examiner contending that nowhere in the original specification was the word "only" used in connection with the single wall construction of the lower portion of the crate and portions of the columns.

Applicant has deleted the language objected to by the Examiner in claim 17 as it relates to the columns. However, with respect to the lower portion of the peripheral wall, the characterization of that construction as being of "only" single wall thickness is accurate and clearly supported in the original disclosure, particularly Figures 5, 6 and 9. Applicant has amended the specification accordingly in order to provide precise antecedent basis for the claim language - a written description rather than a lack of support or new matter issue. Further in this regard, the Examiner's contention that the drawings "clearly" show lower portions of the peripheral wall of double wall construction is simply not true. No part of the lower portion of the peripheral wall is shown to be of double wall construction (see Figures 5, 6 and 9). Accordingly, the new matter rejection should now be withdrawn.

The Examiner has rejected claims 1, 3, 6, 7 and 11 under 35 U.S.C. 102 as anticipated by Hammett '487.

Central to the propriety of this ground of rejection is the Examiner's contention that the thin solid strip of the outer wall 10 located vertically above the cut-outs defining the handholds 24 provides response for the requirement of claim 1 that the peripheral wall adjacent the crate bottom be formed as a solid continuous band along the side walls.

In the first instance, it is readily apparent that the solid strip 10 in Hammett '487 is not located adjacent the crate bottom as required by claim 1. In order to make the distinction even more clear, applicant has amended claim 1 to require that the lower portion of the peripheral wall adjacent the crate bottom and extending upwardly from the

crate bottom be formed as solid continuous bands along the side walls. Clearly, there is no such construction in Hammett '487.

In addition, claim 1 has been amended to specify that the peripheral wall and crate bottom define a crate interior that is devoid of any interior partitions, and that each column have a hollow cap at an upper end thereof and, except for four corner columns, a tapered support buttress extending downwardly and inwardly from a lower edge of a respective one of the hollow caps to the crate bottom. In explaining his rationale for the rejection, the Examiner apparently relies upon the lateral interior partitions in Hammett '487 as providing response for the claimed buttresses. However, in light of the amendment that calls for the interior of the crate to be devoid of any interior partitions, and the additional limitation requiring a tapered support buttress extending downwardly and inwardly from a lower edge of the hollow caps to the crate bottom, it is readily apparent that Hammett provides no such response for these limitations. Moreover, claim 1 has been amended to require that the lower portion of the side and end walls be connected to the crate bottom by plural groups of inwardly directed ribs, one of the plural groups of ribs arranged directly below each cut-out and extending vertically along the peripheral wall from each cut-out to the crate bottom.

In Hammett '487, there is only one rib that connects the peripheral side wall to the crate bottom directly below the cut-outs in the upper portion of the peripheral wall.

For all of the above reasons, it is respectfully submitted that Hammett does not anticipate or render obvious the subject matter of claim 1 as amended.

It is also noted that the subject matter of dependent claim 3 is not disclosed in Hammett, and claims 6, 7 and 11 are patentable by reason of their dependence upon claim 1.

The Examiner has rejected claims 17, 20 and 24 under 35 U.S.C. 102 as anticipated by Apps '277.

Central to the propriety of this ground of rejection is the Examiner's contention that Apps '277 discloses a peripheral wall adjacent the crate bottom that is formed as a solid continuous band that is of single wall construction.

In making this rejection, the Examiner apparently takes the position (as stated on page 6 with respect to claim 1), that any double wall construction incorporates a single wall construction. This interpretation of the claim language is manifestly improper. The use of the term "single wall construction" necessarily precludes a "double wall construction" as those terms would normally be understood by one of ordinary skill in the art. Moreover, claim 17 requires the lower portion of the peripheral wall to be of single wall construction only. In Apps '277, the corresponding wall portion is of double wall construction as recognized by the Examiner. Regarding claim 24, that claim has been amended to clarify that the spaced wedge elements are located on selected ones, but not all, of the columns, and that the spaced wedge elements extend upwardly from the ledge that separates the lower wall portion from the upper wall portion. This arrangement is nowhere disclosed or suggested in Apps '277. Withdrawal of this ground of rejection is also requested.

The Examiner has rejected claim 2 under 35 U.S.C. 103 as unpatentable over Hammett '487 in view of Apps '461. According to the Examiner, Hammett discloses the invention except for the number of ribs in each group being three. The Examiner contends that Apps teaches a group of three ribs as shown in the bottom perspective of Figure 3, and concludes that it would have been obvious to add more ribs to each group in order to further strengthen the entire connection of the sided end walls to the bottom.

In Figure 3 of Apps '461, the ribs referred to by the Examiner are not L-shaped and, at best, serve to connect an inner wall portion of a double thickness peripheral wall to the crate bottom. As required by claim 1 from which claim 2 depends, the plural groups of ribs must be arranged directly below each cut-out and extending vertically along the single wall only construction to the crate bottom. Moreover, the combination fails to evidence the obviousness of claim 1 for essentially the same reasons presented hereinabove with respect to the rejection based upon Hammett alone.

The Examiner has rejected claims 4, 5, 8-10, 12 and 16 under 35 U.S.C. 103 as unpatentable over Hammett in view of Apps '277.

Claims 4, 5 and 8-10 depend from claim 1 and Apps '277 does not remedy the deficiencies of Hammett as explained hereinabove in connection with the rejection of independent claim 1, particularly with respect to the single wall construction in the lower portion of the peripheral wall. The limitations in claim 10 are also nowhere disclosed in the combination of references. Accordingly, the combination of Hammett in view of

Apps '277 is necessarily insufficient to render obvious the subject matter of dependent claims 4, 5 and 8-10.

With respect to independent claim 12, that claim has also been amended to require that the lower portion of the peripheral wall from the ledge to the crate bottom be formed of solid single wall thickness only. In Hammett '487, the band 10 relied upon by the Examiner does not extend from any ledge (separating the crate lower portion from the crate upper portion) to the crate bottom. It is also readily apparent that Apps '277 is not applicable to Hammett in that if Hammett were modified to fill in the windows in the lower portion of the peripheral side wall, the crate would not stack as intended by Hammett. Accordingly, the combination fails to evidence the obviousness of either of claims 12 or 16.

The Examiner has rejected claims 1-12, 15-20, 23 and 24 under 35 U.S.C. 103 as unpatentable over Apps '277 in view of Hammett '487.

For independent claims 12, 17 and 24, the Examiner regards Apps as providing response for each of the limitations in those claims with the exception of a connection in the middle of the handle, extending to the crate bottom. The Examiner contends that it would have been obvious to add such a connection in order to support the middle portion of the handle. With regard to independent claim 12, Apps '277 discloses a lower wall portion of double wall construction, and Hammett is clearly non-responsive with respect to the language in claim 12 requiring that the lower portion of the peripheral wall from the ledge (separating the upper and lower portions of the side wall) to the crate bottom be

formed of solid single wall thickness only. As already explained hereinabove, no combination with Apps '277 is sufficient to render this construction obvious.

With regard to independent claim 17, that claim also requires that lower portions of the peripheral wall adjacent the crate bottom be formed as solid continuous bands along the side walls, with lower portions of the peripheral wall being of only single wall construction. For reasons already stated, neither reference discloses this arrangement. Accordingly, independent claim 17 is not rendered obvious by the combination of Hammett '487 and Apps '277.

With regard to independent claim 24, and as already noted above, none of the prior art as cited and applied by the Examiner discloses or suggests the claimed arrangement requiring a plurality of laterally spaced wedge elements on outside surfaces of selected ones of the columns but fewer than all of said columns, extending upwardly from the ledge and thus providing a smooth transition from the upper portion to the lower portion of the side walls.

It is further noted that the combination of Hammett and Apps '277 also fails to provide response for the plural groups of L-shaped ribs located beneath each cut-out, connecting the lower portion of the peripheral wall to the crate bottom.

The rejection of claims 1-12, 15-20, 23 and 24 as unpatentable over Apps '277 in view of Hammett '487 should also be withdrawn.

The Examiner has rejected claim 22 as unpatentable over Apps '277. Claim 22 is dependent upon claim 17 and is patentable along therewith for the reasons presented

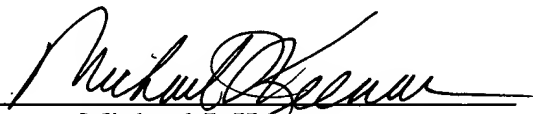
HAMMETT
Appl. No. 09/978,576
August 20, 2003

above with respect to the rejection of claim 17 as anticipated by Apps '277. Moreover, Apps '277 does not disclose or suggest the claimed pair of bottle supporting ribs as acknowledged by the Examiner.

It is respectfully submitted that all of the remaining claims are now in condition for allowance, and early passage to issue is requested. In the event, however, any small matters remain outstanding, the Examiner is encouraged to telephone the undersigned so that the prosecution of this application can be expeditiously concluded.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: 
Michael J. Keenan
Reg. No. 32,106

MJK:ljb
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100